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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 195

No. 199

PETER VINCENT CROLICH, SR., RAY WILSON FAIRCHILD and CHARLES JAMES HOLMAN,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Bart B. Chamberlain, Jr.
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit, in the causes entitled Peter Vincent Crolich, Sr., and Ray Wilson Fairchild vs. United States of America numbered 13843, and Charles James Holman vs. United States of America numbered 13847, both of which judgments were entered on May 20, 1952, and applications for rehearing seasonably filed, were denied in both cases on June 17, 1952.

OPINIONS BELOW

Only one opinion has been rendered in these cases and this opinion was by the Court of Appeals for the Fifth Circuit (R. 62-65) and it is reported in 196 F.2d 879.

JURISDICTION

The judgments of the Court of Appeals were entered on May 20, 1952. (R. 66) Applications for rehearing were filed on June 7, 1952 (R. 67-69) and denied on June 17, 1952. (R. 70) The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254 (1).

QUESTIONS PRESENTED

1. Whether an indictment is sufficient under 18 U. S. C. Section 241 which charges a conspiracy to injure and oppress all of the qualified voters in an entire congressional district rather than such individual voters as were deprived of personal constitutional or statutory rights by the conspiracy.

2. Whether an indictment is sufficient under 18 U. S. C. Section 241 which fails to allege that the acts done in furtherance of the conspiracy deprived citizens of the right to vote for candidates for federal office.

3. Whether an indictment is sufficient under 18 U. S. C. Section 241 which charges a conspiracy to do acts which were offenses under Section 19 of the Enforcement Act of May 31, 1870 (16 Stat. 140,144) but

which was repealed by the Act of February 8, 1894. (28 Stat. 36).

STATUTES INVOLVED

18 U. S. C. Section 241 provides:

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> "If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
> "They shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

This Section came from Section 6 of the Enforcement Act of 1870. Sections 6 and 19 of the Enforcement Act are set out in Appendix A, **infra**, pages 17, 18.

STATEMENT

Petitioners were jointly indicted under 18 U. S. C. Section 241 for conspiracy to injure and oppress voters in the exercise of rights guaranteed to them by the Constitution and laws of the United States. (R.9-14) Pleas of not guilty were entered. (R. 14) Petitioners Peter Vincent Crolich, Sr., and Ray Wilson Fairchild thereupon filed a motion to dismiss on the ground that the indictment failed to state an offense under the statute. (R. 15-21, 26, 27, 7) Petitioner Charles James Holman also filed a motion to dismiss raising the same point though the motion was not verbatim

with the motion on behalf of Crolich and Fairchild. The .motions to dismiss were overruled. (R. 28) Thereupon, the three petitioners herein withdrew their pleas of not guilty and entered pleas of **nolo contendere.** (R. 35, 36) These petitioners were thereupon convicted, fined and sentenced to imprisonment, (R. 37, 57) Crolich for eighteen months imprisonment, and Fairchild and Holman each for one year and a day. Crolich and Fairchild perfected their appeal to the Court of Appeals (R. 38, 58) on the Record which is incorporated in the Record accompanying this Petition. (R. 1-61).

Holman also took an appeal and though there was no formal order of consolidation in the Court of Appeals, the two cases were argued and submitted at the same time, and the Court of Appeals rendered only one opinion in both of the cases (R. 62-65). Therefore, we think this is a sufficient consolidation to justify one Petition for Certiorari for all three of these parties, and the Record in this case for Crolich and Fairchild does present the matters necessary to an understanding of Holman's grievance.

The indictment charges that in the Alabama Primary of May 2, 1950, which was an integral part of the procedure provided for the election of a Senator and Representative (R. 9, 10), defendants conspired to injure and oppress "the legal and qualified voters" (R. 12) of the First Congressional District in their right to cast their votes and have them correctly returned at their full value for candidates for the Senate and House of Representatives. (R. 13) In describing the conspiracy, the indictment charges (1) that part of the conspiracy to obstruct and hinder legally qualified voters was by causing unqualified persons to

impersonate qualified voters and to vote in their place; (Paragraph 6 of the Indictment, R. 13) (2) that part of the conspiracy was for defendants to cast false, forged, and fictitious votes with the intent that said illegal votes should be counted and thus should dilute, diminish and destroy the value and effect of the votes legally cast; (Paragraph 7 of the Indictment, R. 13) (3) that part of the conspiracy was to procure persons to impersonate qualified voters for the purpose of having the legal votes diluted by these illegal votes; (Paragraph 8 of the Indictment, R. 13, 14) and (4) that part of the conspiracy was that the election officials would make false returns of the results of the election. (Paragraph 9 of the Indictment, R. 14).

The questions raised in this Petition were raised in both Courts below. (See Motion to Dimiss, R. 15-21, 26, 27, and the Points on which Appellants Intend to Rely, R. 41-49).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred in holding the indictment in this case stated an offense under the provisions of 18 U. S. C., Section 241, in this:

1. In holding that 18 U. S. C., Section 241 prohibits a conspiracy to injure all of the qualified voters in an entire congressional district rather than such voters as were deprived of personal constitutional or statutory rights.

2. In failing to hold that 18 U. S. C. Section 241 is civil rights legislation applying only to definite

personal rights of individuals (i.e. those who voted for a particular candidate, etc.) and not to the political, non-judicable rights common to all the public.

3. In failing to pass on the question whether the conspiracy prohibited must deprive voters of the right to vote for candidates for federal office.

4. In holding that 18 U. S. C. Section 241 applies to acts which were offenses under Section 19 of the Enforcement Act of May 31, 1870, which was repealed.

5. In holding that 18 U. S. C. Section 241 applies to the facts alleged in the indictment.

6. In not holding 18 U. S. C. Section 241 invalid.

7. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals has Decided an Important Question of Federal Law Which Has Not Been, but Should be Settled by This Court.

The important question of federal law which has not been but should be settled by this Court is the scope and coverage of 18 U. S. C. Section 241, and more particularly, (A) whether this statute can be extended to protect the public generally by an indictment thereunder which fails to identify the parties whose civil rights were conspired against, and (B) whether this statute can be extended to prohibit conspiracies which are not alleged to involve federal offices.

A. The extension of civil rights legislation to protect the public.

The indictment in the case at bar charges that the conspiracy was against "the legal and qualified voters of the aforesaid First Congressional District of Alabama in the free exercise and enjoyment of certain rights and privileges guaranteed and secured to them and each of them by the Constitution and laws of the United States, and particularly the right of suffrage • • •." (R. 12, 13) This simply does not mean what it says. There are at least three groups of legal and qualified voters in this District whose rights were not affected by any conspiracy in this case, namely, (1) voters who were absent and did not vote, (2) voters who cast their votes for the candidate for whom the illegal votes were cast and (3) the voters who voted only for local officers. There may be others. But at least no rights of these three groups were affected by the conspiracy charged here. And we read the statute and the cases construing it as calling for a conspiracy against rights of definable groups only. [1] Otherwise, the statute covers mere dishonesty in elections, and if we read the cases correctly, that is one thing the statute does not cover.

Thus, in **United States v. Bathgate**, 246 U. S. 220, 226, this Court said:

> "The right or privilege to be guarded, as indicated both by the language employed and the context, was a definite, personal one, capable of enforcement by a court, and not the political, nonjudicable one common to all, that the public

(1) In this connection see the discussion of these vote cases by Mr. Justice Frankfurter in the case of *United States v. Williams*, 341 U. S. 70, 79, 80.

should be protected against harmful acts, which is relied on."

The indictment in this case, which was held defective, charged a conspiracy against the candidates and all the voters in the area by bribery of voters. [2]

This distinction between indictments which charge a conspiracy against the civil rights of specific individuals or groups, and indictments which merely charge a conspiracy against the public at large, has been kept sharp in the cases.

Thus, in **United States v. Mosley,** 238 U. S. 383, the conspiracy was not to count the votes of voters in a specified box. [3] In **United States v. Classic,**

(2) The Court set out the substance of the indictment under this Section in its opinion, 246 U.S. 220, 224:

"• • • the two counts based thereon charged defendants with conspiring to injure candidates for presidential electors, the United States Senate and representative in Congress at the regular election in Ohio, November 7, 1916, also qualified electors who might properly vote thereat, in the free exercise and enjoyment of certain rights and privileges secured by Constitution and laws of the United States; namely, the right (a) of being a candidate, (b) that only those duly qualified should vote, (c) that the results should be determined by voters who had not been bribed, and (d) that the election board should make a true and accurate count of votes legally cast by qualified electors and no others. The indictment further alleged the conspiracy was carried into effect as intended by purchasing votes of certain electors and causing election boards to receive them and make inaccurate returns."

(3) The Court sets out the substance of the indictment in its opinion, 238 U.S. 383, 385, 386:

"The indictment contains four counts. The first charges a conspiracy of the two defendants, who were officers and a majority of the county election board of Blaine County, Oklahoma, to injure and oppress certain legally qualified electors, citizens of the United States, being all the voters of eleven precincts in the county, in the free exercise and enjoyment of their right and privilege, under the Constitution and laws of the United States, of voting for a member of Congress for their district. To that end, it is alleged, the defendants agreed that, irrespective of the precinct returns being lawful and regular, they would omit them from their count and from their returns to the state election board. The second count charges the same conspiracy, a secret meeting of the defendants without the knowledge of the third member of their board, for the purpose of carrying it out, and the overt act of making a false return, as agreed, omitting the returns from the named precincts, although regular and entitled to be counted. The third count is like the first with the addition of some details of the plan, intended to deceive the third member of their board. The (386) fourth charges the same conspiracy but states the object as being to injure and oppress the same citizens for and on account of their having exercised the right described."

313 U. S. 299, the conspiracy was against the voters for specified candidates for Congress, and against the candidates themselves. [4] (Note that the government added the candidates' rights as being within the protection of this statute in spite of the statement of this Court in **United States v. Gradwell,** 243 U.S. 476, 486, 487 that the **Mosley** case does not hold that the rights of a candidate are protected by this statute. This Court in the **Classic** case limited its discussion to the rights of voters as being within the protection of the statute.) The indictment in **United States v. Saylor,** 322 U.S. 385 charged a conspiracy against the voters for the Republican candidate by stuffing the ballot box. [5]

In the case at bar, the indictment has gone beyond any of the indictments which have been sustained. [6] The conspiracy charged is not directed against the rights of any candidate, or any voter, or any identifiable group of voters—such as the voters for candidate Hill, or Boykin. Instead, the indictment charges that the conspiracy is against the rights of qualified voters generally.

We are unable to read this indictment and avoid the conclusion that the government is complaining of a dishonest election rather than a deprivation of some specific group's civil rights.

Be that as it may, the fact remains that it is the effort to extend this statute to the protection of rights

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(4) Appendix B, *infra,* pages 19, 22, 23, 26, 27, 29, 30, 33, 37, 38

(5) Appendix B, *infra,* pages 45, 47, 49

(6) See Mr. Justice Frankfurter's remarks in *United States v. Williams,* 341 U. S. 70, 81: "But the validity of a conviction under Section 241 depends on the scope of that section, which cannot be expanded by the draftsman of an indictment."

in gross which is the important federal question which this Court should answer by reviewing this case.

B. The extension of civil rights legislation to the election of non-federal offices.

The indictment in this case alleges that all of the voters of the First Congressional District of Alabama have the right to have their votes for Senator and Representative undiluted. (Paragraph 5 of Indictment, R. 12, 13) But the indictment then goes on to charge that defendants conspired to have unqualified voters impersonate qualified voters and vote in their stead. It is not alleged that defendants conspired to cast a single illegal vote for a candidate for federal office. See in this connection the indictments in the **Classic** and **Saylor cases**, Appendix B, pages 23, 51, where the indictments carefully covered this. The indictment in the case at bar would have been sustained by proof even if the conspiracy were shown to exist solely for a state or local candidate.

The important question of federal law is the sufficiency of an indictment under Section 241 which fails to allege that the conspiracy was against the right of citizens to have their votes for candidates to federal office undiluted.

In **Blitz v. United States**, 153 U. S. 308, which was a prosecution under Section 19 of the Enforcement Act, this Court held an indictment for impersonating a voter was fatally defective for want of adequate allegation that the defendant voted for a candidate for federal office. Accord: **United States v. Seamon**, 23 Fed. 882 (C.C.N.Y.)

In **United States v. Kantor**, 78 F. 2d 710 (C.C.A.2nd) in a prosecution under 18 U.S.C. Section 241, a conviction was reversed where the proof failed to show that the conspiracy was against voters for candidates for federal office.

The question here is whether the doctrine of the **Blitz** case does not also apply to Section 241, which was Section 6 of the Enforcement Acts, as indicated by the **Kantor** case. [7]

In our judgment, this Court should answer this question of federal law, which, so far as we can find, has not been answered.

2. The Questions Presented Are of Importance in the Administration of Federal Criminal Statutes.

Though the questions presented are raised by the allegations contained in an indictment for a federal offense, they are not questions of mere verbiage in an indictment. In other words, a change of the position or emphasis of a few words in the indictment does not cure the objections here raised. The questions here involved go to the very heart of the statute, and a decision on the questions will determine the nature and scope of the investigations and prosecutions under this statute. See **United States v. Williams**, 341 U. S. 70 where certiorari was granted on this ground.

Up to the present time so far as we can tell, the government has always been careful to use this statute

(7) See also *United States v. Williams*, 341 U. S. 70, 73, where Mr. Justice Frankfurter says of Section 241 that it "only covers conduct which interferes with rights arising from the substantive powers of the Federal Government." This must mean that an indictment under this Section must show that federal rights have been infringed by the conspiracy, and in the case at bar this must mean that the indictment must charge that federal officers were affected, or no federal offense has been charged.

to protect civil rights of specific individuals or groups, and the conspiracies prosecuted have involved federal offices, and the indictments we have seen have been careful to so specify. The indictment in the case at bar does not follow this course, but embarks on a new and unexplored area. And it goes to the very vitals of what we understood to be contained in this statute.

Obviously, if this is now and is to remain a civil rights statute, involving federal offices, then the public and the Department of Justice should be so informed in clear and unmistakable language. On the other hand, if this statute contains within itself the essential elements for protecting honest elections generally, the public and the Department of Justice should be so informed, and this matter should not be left to conjecture.

3. The Court of Appeals Has Decided a Federal Question in a Way Probably in Conflict with Applicable Decisions of this Court.

A. Overrules Bathgate Case.

In **United States v. Bathgate,** 246 U. S. 220, the indictment under what is now Section 241 of 18 U. S. C. charges that the conspiracy was to injure the "qualified electors" and the candidate for federal office. This Court held that indictment defective under this statute.

We have been unable to distinguish the indictment in the case at bar from the indictment in the **Bathgate** case insofar as the indictment charges that the conspiracy was directed against certain rights secured by the Constitution and laws of the United States. Nor do we find where the Court of Appeals made

any distinction between the indictments in these two cases. Nor have we heard the government's counsel make any distinction between these two cases. Hence, the question is squarely presented to this Court as to whether **Bathgate** is still good law. [8]

In **United States v. Saylor,** 322 U. S. 385, the conspiracy was against the voters for the Republican candidate. The question was whether ballot stuffing violated the voters' constitutional rights under Section 241. In **United States v. Mosley,** 238 U. S. 383, the question was whether a failure to count the votes in a box violated the voters' constitutional rights under Section 241. This Court held that ballot stuffing in the **Saylor** case violated the voters' rights even as not counting the votes violated the voters' rights in **Mosley.** The suggestion was made that bribery in **Bathgate** diluted the honest votes as much as ballot stuffing in **Saylor.** Hence, there was presented to this Court the question of whether **Bathgate** still had life in it. Certainly, it would have simplified the writing of the Opinion in the **Saylor** case, and it would have clarified the coverage of Section 241 for the Court to have overruled **Bathgate.** But the significant thing is that this Court did not overrule **Bathgate** in **Saylor.** It deliberately left it standing.

The Court of Appeals in the case at bar says that we are controlled by **Saylor** and not **Bathgate.** But this overlooks totally the position of Petitioners in the case at bar. Petitioners do not argue that impersonating voters does not dilute the honest votes, and, therefore, does not violate the rights of honest voters. Petitioners' position here is that the question is whose rights

(8) It was cited without explicit disapproval in *United States v. Williams,* 341 U. S. 70, 80.

are protected by Section 241. **Bathgate** says that the rights of voters generally to an honest election are not protected by Section 241. **Saylor** quite properly, in our opinion, does not question that holding, for it was not involved in **Saylor**, and **Saylor** left **Bathgate** standing. But the Court of Appeals held that the indictment in the case at bar is good. We cannot see how the indictment in the case at bar can stand and also **Bathgate**. One must go.

The Court of Appeals says it could not overrule **Saylor**. We did not ask them to under this point. But if that Court could not overrule **Saylor**, we do not see how it can overrule **Bathgate**, and we submit that is what it has done.

Under the analysis we make of the cases, we find no inconsistency between **Bathgate** and **Saylor**. The only inconsistency we find here is between this case and **Bathgate**. If **Bathgate** is still good law, as we read **Saylor** as saying, then the conclusion is inescapable that the decision by the Court of Appeals in this case at bar is in conflict with the applicable decision, namely, **Bathgate**.

B. The Repeal of Section 19 of the Enforcement Act Carries Out Impersonating a Voter as a Federal Offense.

We are not satisfied that the impersonation of voters constitutes an offense under Section 241. It will be recalled that the present Section 241 was originally enacted as Section 6 of the Enforcement Act of May 31, 1870. At the same time, and as part of the same Act, Section 19 was enacted and this Section specifically made the acts charged in the indictment in the case

at bar substantive offenses. But Section 19 was repealed by Act of February 8, 1894. Hence, the question arises as to whether the acts condemned by Section 19 of the Enforcement Act, were also condemned by Section 6 of that Act at the time of enactment. [9] (For no one has ever contended so far as we can find, that the legislative intent expressed in Section 6 changed subsequent to enactment). See **United States v. Bathgate**, 246 U. S. 220 which held that Section 6 did not include bribery which was included in Section 19.

We concede that **United States v. Saylor**, 322 U. S. 385, in an Opinion by a divided Court, held that Section 6 and Section 19 of the original Enforcement Act overlapped as to the offense of stuffing the ballot box. However, there was a dissent by Justices Douglas, Black and Reed. The dissenting Opinion says that the repeal of Section 19 of the Enforcement Act carried out the substantive offenses contained therein. See also the dissenting Opinion of Justice Douglas, concurred in by Justices Black and Murphy in **United States v. Classic**, 313 U. S. 299, 329.

These dissenting Opinions are so cogently argued and so forcefully put that we could not improve on them by attempting to paraphrase them. We believe that on further review by this Court, that these dissenting Opinions will be found to be more persuasive than the majority Opinions, and that this Court will be constrained to adopt the reasoning contained therein as the prevailing Opinion for the Court in the case at bar.

(9) Compare *United States v. Williams*, 341 U. S. 70, 78 where this Court did not find a duplication in Sections 6 and 17 of the Enforcement Act

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

SECTION 6 AND SECTION 19 OF THE ENFORCEMENT ACT OF 1870.

An Act to Enforce the Right of Citizens of the United States to Vote in the Several States of This Union, and for Other Purposes. May 31, 1870.

Sec. 6. And Be It Further Enacted, That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years—and shall, moreover, be thereafter ineligible to, and disabled from holding any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

Sec. 19. And Be It Further Enacted, That if at any election for representative or delegate in the Congress of the United States any person shall knowingly personate and vote, or attempt to vote, in the name of any other person, whether living, dead, or fictitious; or vote more than once at the same election for any candidate for the same office; or vote at a place where he may not be lawfully entitled to vote; or vote with-

out having a lawful right to vote; or do any unlawful act to secure a right or an opportunity to vote for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of any State of the United States of America, or of any Territory thereof, from freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right; or compel or induce by any such means, or otherwise, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any of such means, or other unlawful means, induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of prosecution.

APPENDIX B

United States of America
Eastern District of Louisiana No. 20067
New Orleans Division

In the District Court of the United States in and for the Eastern District of Louisiana, New Orleans Division, at the May Term Thereof, A.D. 1940.
United States of America

vs.

Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher and J. J. Fleddermann.

Indictment

The Grand Jurors of the United States duly empaneled, sworn and charged at the term aforesaid of the court aforesaid, on their oaths present and charge:

That Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher and J. J. Fleddermann, hereinafter called defendants, together with divers and sundry other persons to your Grand Jurors unknown, heretofore, to-wit, on or about September 1, 1940, and continuously thereafter up to and including September 11, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this Court, did unlawfully, wilfully, knowingly and feloniously conspire, confederate and agree among themselves and with each other and with divers other persons to this Grand Jury unknown, to injure, oppress, threaten and intimidate citizens in the free exercise and enjoy-

ment of rights and privileges secured to them by the Constitution and laws of the United States; that is to say,

That an election for the office of Congressman in the Congress of the United States of America will be held in the Second Congressional District of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana on November 5, 1940;

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September 10, 1940, in the said Second Congressional District of Louisiana for the purpose of selecting and nominating a candidate for the Democratic party to run in said election of November 5, 1940; that in the said Second Congressional District of Louisiana nomination as the candidate of the Democratic party is and has always been equivalent and tantamount to election, and that, without exception, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the

Eastern District of Louisiana and within the jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to-wit, T. Hale Boggs, Paul H. Maloney and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress, and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10, 1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

That it was part of said conspiracy and the purpose of said conspiracy to injure, oppress, threaten and intimidate the said citizens and registered voters who cast their ballots in said second precinct of the eleventh ward of New Orleans in said Democratic primary election in the free exercise and enjoyment of their rights and privileges secured to them by the Constitution and laws of the United States, to-wit, their rights and privileges to vote and to have their votes counted as cast for the candidate of their choice in said election;

That it was also a part of said conspiracy and the purpose of said conspiracy to injure, oppress, threaten

and intimidate Paul H. Maloney and Jacob Young, citizens and candidates for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana in the free exercise and enjoyment of the rights and privileges secured to them by the Constitution and laws of the United States, to-wit, their right and privilege as citizens to run for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana, by preventing each of them from being legally and properly nominated as a candidate for said office; and, to-wit, their right and privilege, to have counted for them as cast, all of the votes cast for them in said Democratic primary election;

That it was further a part of said conspiracy and the purpose of said conspiracy to deprive Paul H. Maloney and Jacob Young of the votes cast for them in said second precinct of the eleventh ward by not counting some of the votes cast for them and by erasing the marks on the ballots placed by the voters in said precinct behind the names of Paul H. Maloney and Jacob Young indicating votes for Paul H. Maloney and Jacob Young, and placing in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs;

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge that, after the formation of said unlawful conspiracy, and in furtherance thereof, and to effect the object thereof, the said conspirators did commit and do certain overt acts, now herein specified, to-wit:

Overt Acts.

1. That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court, the said defendants changed eighty-three (83) ballots that had been cast for Paul H. Maloney and marked and counted them as votes for T. Hale Boggs.

2. That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court, the said defendants changed fourteen (14) ballots that had been cast for Jacob Young and marked and counted them as votes for T. Hale Boggs.

3. That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court, the said defendants certified in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the office of Congressman from the Second Congressional District of Louisiana was as follows, to-wit:

For T. Hale Boggs	526
For Paul H. Maloney	8
For Jacob Young	3

when in truth and in fact the correct vote cast was:

For T. Hale Boggs	426
For Paul H. Maloney	94
For Jacob Young	17

all of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count Two.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court, one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher, and one J. J. Fleddermann, hereinafter called defendants, who were then and there election officers of the State of Louisiana, to-wit, Commissioners of Election in the second precinct of the eleventh ward, New Orleans, selected and acting in accordance with the provisions of Act No. 46 of the Legislature of Louisiana for the year 1940, and acting under color of a law and statute of the State of Louisiana, to-wit, the said Act No. 46 of the Legislature for the year 1940 creating the office of Commissioner of Election and defining the duties thereof, did unlawfully, wilfully, knowingly and feloniously subject and cause to be subjected registered voters of the second precinct of the eleventh ward of New Orleans, inhabitants of the State of Louisiana, to the deprivation of rights, privileges and immunities secured and protected by the Constitution and laws of the United States, to-wit, their right to cast their votes for the candidate of their choice and to have their votes counted for such candidate as cast in the Democratic primary election of September 10, 1940; that is to say,

That an election for the office of Congressman in the Congress of the United States of America will be

held in the Second Congressional District of the State of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana, on November 5, 1940;

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September 10, 1940, in the said Second Congressional District of Louisiana for the purpose of electing and nominating a candidate for the Democratic party to run in said election of November 5, 1940; that in said Second Congressional District of Louisiana nomination as the candidate of the Democratic party is and has always been equivalent and tantamount to election, and that, without exception,, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to-wit, T. Hale Boggs,

Paul H. Maloney and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress, and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10, 1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

That the defendants, well knowing the premises aforesaid, did on the date aforesaid and at the place aforesaid, wilfully fail and refuse to count some of the votes cast in said election for Paul H. Maloney and for Jacob Young and did erase the marks on various ballots placed by said voters in said precinct behind the names of Paul H. Maloney and Jacob Young indicating votes for Paul H. Maloney and Jacob Young, and did place in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs, and did wilfully fail and refuse to count votes cast for Paul H. Maloney and Jacob Young;

That the defendants certified in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the office of Congressman from the Second Congressional District of Louisiana was as follows, to-wit:

For T. Hale Boggs	526
For Paul H. Maloney	8

For Jacob Young 3

when in truth and fact the correct vote cast was:

For T. Hale Boggs 426
For Paul H. Maloney 94
For Jacob Young 17

all of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count Three.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this Court, one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher, and one J. J. Fleddermann, hereinafter called defendants, who were then and there election officers of the State of Louisiana, to-wit, Commissioners of Election in the second precinct of the eleventh ward, New Orleans, selected and acting in accordance with the provisions of Act No. 46 of the Legislature of Louisiana for the year 1940, and acting under color of a law and statute of the State of Louisiana, to-wit, the said Act No. 46 of the Legislature of the State of Louisiana for the year 1940, creating the office of Commissioner of Election and defining the duties thereof, did unlawfully, wilfully, knowingly and feloniously subject and cause to be subjected on Paul H. Maloney, an inhabitant of the State of Louisiana, to the deprivation of rights, privileges and immunities secured and protected by the Constitution and laws of the United

States, to-wit, his rights, privileges and immunities (1) to offer himself as a candidate for the office of Congressman in the Congress of the United States for the Second Congressional District of Louisiana; (2) to be legally and properly nominated as a candidate for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana; and (3) to have counted for him all votes legally cast for him for said nomination for said office; that is to say,

That an election for the office of Congressman in the Congress of the United States of America will be held in the Second Congressional District of the State of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana on November 5, 1940.

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September 10, 1940, in the said Second Congressional District of Louisiana for the purpose of electing and nominating a candidate for the Democratic party to run in said election of November 5, 1940; that in said Second Congressional District of Louisiana nomination as the candidate of the Democratic party is and has always been equivalent and tantamount to election, and that, without exception, since the adoption of the first primary election law by the State of Louisiana the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected:

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to-wit, T. Hale Boggs, Paul H. Maloney and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10, 1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

That the defendants, well knowing the premises aforesaid, did on the date aforesaid and at the place aforesaid, wilfully fail and refuse to count some of the votes cast in said election for Paul H. Maloney and did erase the marks on various ballots placed by said voters in said precinct behind the name of Paul

H. Maloney indicating votes for Paul H. Maloney, and did place in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs, and did wilfully fail and refuse to count votes cast for Paul H. Maloney;

That the defendants certified in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the office of Congressman from the Second Congressional District of Louisiana was as follows, to-wit:

For T. Hale Boggs	526
For Paul H. Maloney	8
For Jacob Young	3

when in truth and in fact the correct vote cast was:

For T. Hale Boggs	426
For Paul H. Maloney	94
For Jacob Young	17

all of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count Four

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge; That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this Court, one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher, and one J. J. Fleddermann, hereinafter called defendants, who were then and there election officers of the State

of Louisiana, to-wit, Commissioners of Election in the Second Precinct of the eleventh ward, New Orleans, selected and acting in accordance with the provisions of Act No. 46 of the Legislature of Louisiana for the year 1940, and acting under color of a law and statute of the State of Louisiana, to-wit, the said Act No. 46 of the Legislature of the State of Louisiana for the year 1940, creating the office of Commissioner of Election and defining the duties thereof, did unlawfully, wilfully, knowingly and feloniously subject and cause to be subjected one Jacob Young, an inhabitant of the State of Louisiana, to the deprivation of rights, privileges and immunities secured and protected by the Constitution and laws of the United States, to-wit, his rights, privileges and immunities (1) to offer himself as a candidate for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana; (2) to be legally and properly nominated as a candidate for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana; and (3) to have counted for him all votes legally cast for him for said nomination for said office; that is to say.

That an election for the office of Congressman in the Congress of the United States of America will be held in the Second Congressional District of the State of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana on November 5, 1940;

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September

10, 1940, in the said Second Congressional District of Louisiana for the purpose of electing and nominating a candidate for the Democratic party to run in said election of November 5, 1940; that in said Second Congressional District of Louisiana nomination as the candidate for the Democratic party is and has always been equivalent and tantamount to election, and that, without exception, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the Eastern District of Louisiana and within the Jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to-wit, T. Hale Boggs, Paul H. Maloney and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress, and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10,

1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

That the defendants, well knowing the premises aforesaid, did on the date aforesaid and at the place aforesaid, wilfully fail and refuse to count some of the votes cast in said election for Jacob Young and did erase the marks on various ballots placed by said voters in said precinct behind the name of Jacob Young indicating votes for Jacob Young, and did place in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs, and did wilfully fail and refuse to count votes cast for Jacob Young;

That the defendants certified in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the office of Congressman from the Second Congressional District of Louisiana was as follows, to-wit:

For T. Hale Boggs	526
For Paul H. Maloney	8
For Jacob Young	3

when in truth and in fact the correct vote cast was:

For T. Hale Boggs	426
For Paul H. Maloney	94
For Jacob Young	17

all of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count Five.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher and one J. J. Fleddermann, hereinafter called the defendants, together with divers and sundry other persons to your Grand Jurors unknown, heretofore, to-wit, on or about September 10, 1940, and continuously up to and including September 11, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and fraudulently devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and claims, from Paul H. Maloney, from Jacob Young, from the legally and qualified registered voters of election precinct two, ward eleven, of the City of New Orleans, from the Democratic party of the Second Congressional District of Louisiana, from the citizens of the Second Congressional District of Louisiana, from the State of Louisiana and the Secretary of State of Louisiana, and from the United States of America and the Congress of the United States, and divers other persons to your Grand Jurors unknown, which said scheme and artifice to defraud was to be effected by the use and misuse of the Post Office establishment of the United States, and in furtherance of and for the purpose of executing said scheme and artifice, did deposit and cause to be deposited in an authorized depository for mail matter to be sent and delivered by the Post Office establishment of the United States, and did cause to be delivered by mail, according to the direction thereon, divers and sundry

letters, packages and writings, which said scheme and artifice to defraud was in substance as follows:

That an election for the office of Congressman in the Congress of the United States of America will be held in the Second Congressional District of the State of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana on November 5, 1940.

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September 10, 1940; in the said Second Congressional District of Louisiana for the purpose of selecting and nominating a candidate for the Democratic party to run in said election of November 5, 1940; that in the said Second Congressional District of Louisiana nomination as the candidate of the Democratic party is and has always been equivalent and tantamount to election, and that, without exception, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to-wit, T. Hale Boggs, Paul H. Maloney, and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10, 1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

That the defendants, well knowing the premises aforesaid, did on the date aforesaid and at the place aforesaid, wilfully fail and refuse to count some of the votes cast in said election for Paul H. Maloney and for Jacob Young and did erase the marks on various ballots placed by said voters in said precinct behind the names of Paul H. Maloney and Jacob Young, indicating votes for Paul H. Maloney and Jacob Young, and did place in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs, and did wilfully fail and refuse to count votes cast for Paul H. Maloney and Jacob Young;

That the defendants certified and represented in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the

office of Congressman from the Second Congressional District of Louisiana was as follows, to-wit:

For T. Hale Boggs	526
For Paul H. Maloney	8
For Jacob Young	3

when in truth and in fact the correct vote cast was:

For T. Hale Boggs	426
For Paul H. Maloney	94
For Jacob Young	17

That it was a part of said scheme and artifice to defraud that the defendants would fail and refuse to count votes legally cast for Paul H. Maloney and Jacob Young in order to deprive them of the nomination for the office of Congressman in the Congress of the United States of America from the Second Congressional District of Louisiana, and would instead count votes which had been cast for Paul H. Maloney and Jacob Young for their own candidate, T. Hale Boggs, in order: to defraud Paul H. Maloney and Jacob Young of their right to be elected Congressman in the Congress of the United States from the Second Congressional District of Louisiana; to defraud and deprive the said Paul H. Maloney and the said Jacob Young of the emoluments of said office, to-wit, the sum of Ten Thousand Dollars ($10,000.00) per year for two years; to defraud and deprive the said Paul H. Maloney and the said Jacob Young of their nomination as candidates for the Democratic party in the election for said office; to defraud and deprive Paul H. Maloney and Jacob Young of votes cast for them in said primary election; to defraud and deprive the registered voters of the second precinct of the eleventh ward of New Orleans of the right to cast their votes

for Paul H. Maloney and Jacob Young and to have their votes counted as cast; to defraud and deprive the Democratic party of its right to its legally selected nominee for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana; to defraud and deprive the citizens of the Second Congressional District of Louisiana of the Congressman of their choice; to defraud and deprive the State of Louisiana and the Secretary of State of Louisiana of the true record and vote cast in said precinct; and to defraud the United States of America and the Congress of the United States of America of the right to have a legally selected Congressman from the Second Congressional District of Louisiana;

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That the pretenses, representations and claims of the defendants herein, that the correct vote cast in said second precinct of the eleventh ward of New Orleans was as follows, to-wit:

For T. Hale Boggs	526
For Paul H. Maloney	8
For Jacob Young	3

were false, untrue and fraudulent in this, to-wit: that the true and correct vote cast in said precinct was:

For T. Hale Boggs	426
For Paul H. Maloney	94
For Jacob Young	17

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: that each and every one of the pretenses, representations and claims made and intended to be made by the said de-

fendants were false and untrue and intended to be false and untrue, and at all times mentioned herein were known by the said defendants to be false and untrue and were made and intended to be made by the defendants for the purpose of accomplishing the frauds hereinabove described.

That Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher and J. J. Fleddermann, the defendants herein, on or about the 11th day of September, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court for the purpose of executing the scheme and artifice aforesaid, unlawfully, fraudulently and feloniously did knowingly deposit and cause to be deposited in an authorized depository for mail matter of the United States at New Orleans, Louisiana, a certain tally sheet for district offices, a certain tally sheet for parish offices, a certain poll list for district offices and a certain poll list for parish offices enclosed in a postpaid envelope addressed to Hon. Jas. A. Gremillion, Secretary of State, Baton Rouge, Louisiana, to be sent and delivered by the Post Office establishment of the United States, the face and reverse of which tally sheet for district offices were and are of the following tenor, to-wit:

"1940 Primary for District Officers.

TALLY SHEET

Of the amount of votes of the Democratic Primary Election held in the Second Precinct of the Eleventh Ward of the Parish of Orleans on the 10th day of September, A.D. 1940, for Member of Congress, Second Congressional District, and for Member of Public Service Commission, First Public Service Commission District.

Officers and Names	Tallies.	Amount of Votes in Letters	Amount of Votes in Figures
For Member of Seventy-seventh Congress of the United States, Second Congressional District.			
T. Hale Boggs		Five Hundred and Twenty-six	526

Officers and Names	Amount of Votes in Letters	Amount of Votes in Figures
For Member of Seventy-seventh Congress of the United States, Second Congressional District.		
Paul H. Maloney	Eight	8
For Member of Seventy-seventh Congress of the United States, Second Congressional District.		
Jacob Young	Three	3
For Member of the Louisiana Publ.. Service Commission, First Public Service Commission District.		
Maurice B. Gatlin	Eight	8
For Member of the Louisiana Public Service Commission, First Public Service Commission District.		
Allen H. Johness	Three	3
For Member of the Louisiana Public Service Commission, First Public Service Commission District.		
Nathaniel B. Knight, Jr.	Five Hundred and Twenty	520
For Member of the Louisiana Public Service Commission, First Public Service Commission District.		
James P. O'Connor, Jr.	One	1
For Member of the Louisiana Public Service Commission, First Public Service Commission District.		
Albert O. Rappelet	0	0
For Member of the Louisiana Public Service Commission, First Public Service Commission District.		
Francis Williams	Five	5

And having completed the count, which we certify to be correct, we have replaced the ballots thus counted, together with a District poll list, showing the names of the voters who cast said ballots and a District tally sheet in the ballot box, which was sealed by us and will be delivered to the Clerk of the Criminal District Court, and will mail a duplicate District poll list showing the names of the voters who cast said ballots and a duplicate District tally sheet to Jas. A. Gremillion, Secretary of State, Baton Rouge, Louisiana, as required by Act 46 of 1940.

1. (Signed) Patrick B. Classic)
2. (Signed) John A. Morris) Commissioners
3. (Signed) Bernard W. Yeager, Jr.) of
4. (Signed) J. Fleddermann) Election
5. (Signed Wm. Schumacher)

Sworn to and subscribed before J. Fleddermann, Commissioner, by

.....

(Naming the Commissioners signing and taking oaths)

majority of the Commissioners serving at this, the 2 Precinct poll of Ward 11 of the Parish of Orleans, and by me sworn to and subscribed as correct, this 10th day of September, A. D. 1940.

(Signed) J. Fleddermann,
Any Commissioner."

That at the time of placing and causing to be placed the said package, tally sheet for district offices, tally sheet for parish offices, poll list for district offices and poll list for parish offices in an authorized depository for mail matter of the United States aforesaid, the defendants, Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher and J. J. Fleddermann, then and there well knew that the said package, the said tally sheet for district offices, the said tally sheet for parish offices, the said poll list for district offices and the said poll list for parish offices were for the purpose of executing the said scheme and artifice and were for the purpose of defrauding Paul H. Maloney, Jacob Young, the legally and qualified registered voters of election precinct two, ward eleven, of the City of New Orleans, the Democratic party of the Second Congressional District of Louisiana, the citizens of the Second Congressional District of Louisiana, the State of Louisiana, the Secretary of State of Louisiana, the United States of America, and the Congress of the United States; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count Six

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher and one J. J. Fleddermann, hereinafter called the defendants, together with divers and sundry other persons to your Grand Jurors unknown, heretofore, to-wit, on or about September 10, 1940, and continuously up to and

including September 11, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this Court, so having unlawfully, wilfully, knowingly and fraudulently devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and claims, that is to say, the same scheme and artifice that is set forth and described in the fifth count of this indictment, the allegations concerning which in said fifth count are incorporated by reference thereto in this count as fully as if they were here repeated, and for the purpose of executing said scheme and artifice, unlawfully, fraudulently and feloniously did knowingly deposit and cause to be deposited in an authorized depository for mail matter of the United States at New Orleans, Louisiana, a certain tally sheet for district offices and a certain poll list for district offices enclosed in a postpaid envelope addressed to Hon. Edw. A. Haggerty, Chairman Democratic Executive Committee, Second Congressional District, New Orleans, Louisiana, to be sent and delivered by the post office establishment of the United States, the face of which tally sheet for district offices was and is of the following tenor, to-wit:

"Second Congressional District."

TALLY SHEET

Of the amount of votes of the Democratic Primary Election held in the Second Precinct of the Eleventh Ward in the Parish of Orleans on the 10th day of September, A. D. 1940, for Member of the Seventh-seventh Congress of the United States, from the Second Congressional District of Louisiana, for the term expiring January 23, 1943.

Tally.

Officers and Names	Amount of Votes in Letters	Amount of Votes in Figures
For Member of Seventy-seventh Congress of the United States, Second Congressional District.		
T. Hale Boggs	Five Hundred and Twenty-six	526
For Member of Seventy-seventh Congress of the United States, Second Congressional District.		
Paul H. Maloney	Eight	8
For Member of Seventy-seventh Congress of the United States, Second Congressional District.		
Jacob Young	Three	3

We hereby certify that this tally sheet shows a true and correct tabulation of the votes cast at aforesaid precinct for the offices shown hereon, and that this tally sheet will be mailed to Edward A. Haggerty, Chairman, Second Congressional District Democratic Executive Committee, New Orleans, La., as required by Act 46 of 1940.

1. (Signed) Patrick B. Classic)
2. (Signed) John A. Morris) Commissioners
3. (Signed) Bernard W. Yeager, Jr.) of
4. (Signed) J. Fleddermann) Election
5. (Signed) Wm. Schumacher)

Sworn to and subscribed before J. Fleddermann, Commissioner, by .....

(Naming the Commissioners signing and taking oaths)

majority of the Commissioners serving at this, the 2 Precinct poll of Ward 11 of the Parish of Orleans, and by me sworn to and subscribed as correct, this 10th day of September, A. D. 1940.

(Signed) J. Fleddermann,
Any Commissioner."

That at the time of placing and causing to be placed the said package, said tally sheet for district offices and the said poll list for district offices in an authorized depository for mail matter of the United States aforesaid, the defendants, Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher and J. J. Fleddermann, then and there well knew that the said package, the said tally sheet for district offices and the said poll list for district offices were for the purpose of executing the said scheme and artifice and were for the purpose of defrauding Paul H. Maloney, Jacob Young, the legally and qualified registered voters of election precinct two, ward eleven, of the City of New Orleans, the

Democratic party of the Second Congressional District of Louisiana, the citizens of the Second Congressional District of Louisiana, the State of Louisiana, the Secretary of State of Louisiana, the United States of America and the Congress of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

s/ Rene A. Viosca,
United States Attorney.
s/ J. Skelly Wright,
Assistant U. S. Attorney.
s/ Hilary J. Gaudin,
Assistant U. S. Attorney.
s/ Robert W. Weinstein,
Assistant U. S. Attorney.

A true bill.
New Orleans, La.,
Sept. 25, 1940.

s/ E. R. du Mont,
Foreman.

Clerk's Office:
A True Copy
Jan. 31, 1951
s/ H. W. Nick.

(Seal) Deputy Clerk, United States District Court
Eastern District of Louisiana
New Orleans, La.

United States District Court,
Eastern District of Kentucky.
November Term, 1943.
At London.
The United States of America

vs.

Clyde Saylor, J. Henderson Brock, Jesse Blanton Saylor, Alonzo Wilson.

INDICTMENT

The Grand Jurors of the United States of America, duly impaneled, sworn, and charged to inquire within and for the Eastern District of Kentucky, upon their oaths do find and present:

1. That on the 3rd day of November, 1942, a general election was duly and legally held within and for the State of Kentucky, for the purpose of electing a United States Senator to serve in the Congress of the United States of America, as provided by the laws of United States, and that pursuant to the laws of the State of Kenucky, a polling place was duly opened for the purpose of holding said election and voting in Molus Precinct No. 32, Harlan County, Kentucky.

2. That at said election in said Molus precinct No. 32, Harlan County, Kentucky, many persons who were citizens and residents of the United States and of Harlan County, Kentucky, were entitled to cast their ballots and vote at said election for a duly qualified person who was then and there a candidate for the office of Senator of the United States, in that they were then and there duly registered as such voters and possessed all the necessary and requisite qualifications

provided by the laws of the State of Kentucky to entitle them to vote for such person at said election in said precinct; that the names of all of said legal and qualified voters in said precinct who were entitled to vote for said candidate at said election are to the Grand Jurors unknown, and that those who are known to the Grand Jurors are too numerous to include in this indictment and that said persons will be hereinafter referred to in this indictment as voters.

3. That the said voters and each of them then and there possessed the right and privilege guaranteed and secured to them by the Constitution and laws of the United States, at said election in said precinct, to choose and to vote for a candidate for the office of United States Senator to represent the people of the State of Kentucky and the United States in the Congress of the United States; and the further right and privilege to have their said votes preserved, returned and recorded by the duly constituted and acting election officers in said precinct at said election, and honestly preserved, returned, recorded, counted and given their intended effect and certified by the County Board of Election Commissioners within and for Harlan County, Kentucky, as the true result of said election in said precinct; that said voters and each of them then and there possessed the right and privilege guaranteed and secured as aforesaid to express by their votes their choice of a candidate as aforesaid and the further right and privilege to have their said expressions of choice accorded and given their full value and effect, that is to say, the right and privilege that the value and effect of their said votes and expressions of choice should not be impaired, lessened, diminished, diluted and destroyed by fictitious ballots falsely cast, counted, recorded, returned and certified for a candi-

date opposed to the candidate for the office of United States Senator for whom the aforesaid voters had voted.

4. That at said election in said Molus Precinct No. 32, Harlan County, Kentucky, Clyde Saylor and J. Henderson Brock acted as the duly appointed and qualified Judges of said election, and Jesse Blanton Saylor acted as the duly appointed and qualified Clerk of said election, and Alonzo Wilson acted as the duly appointed and qualified Sheriff of said election at said precinct aforesaid, and that they and each of them then and there assumed their respective duties and obligations aforesaid as such Judges, Clerk and Sheriff of election and acted and professed to act in their respective official capacities aforesaid, and then and there conducted said election in said precinct.

5. That on said date, to-wit, the 3rd day of November, 1942, at the voting place legally selected for voting at and located in Molus precinct No. 32, Harlan County, Kentucky, at the general election aforesaid, the aforesaid voters in said precinct at said election duly marked and cast their votes on the ballots provided for said purpose pursuant to law, for the duly and legally qualified person who then and there was the Republican candidate for election to the office of United States Senator to represent the people of the State of Kentucky and the United States in the Congress of the United States of America, by appropriately, properly and lawfully placing a cross mark on said ballots to denote their desire to vote for and that they did legally mark their ballots and vote for said Republican candidate.

6. That on or about the 15th day of October, 1942, and continuously until and including the date of the returning of this indictment, at Molus, in Harlan County, State of Kentucky, in the Eastern District of Kentucky, and within the jurisdiction of this Court, they, the said Clyde Saylor, J. Henderson Brock, Jesse Blanton Saylor and Alonzo Wilson, hereinafter referred to as defendants, did unlawfully, wilfully, knowingly and feloniously conspire among themselves and with each other and with others whose names are to the Grand Jurors unknown, to injure and oppress divers citizens of the United States of America, namely, the legal and qualified voters as herein defined of said Molus precinct No. 32, Harlan County, Kentucky, in the free exercise and enjoyment of the rights and privileges guaranteed and secured to them and each of them by the Constitution and laws of the United States of America, that is, the rights and privileges described and set forth in paragraph 3 of this indictment, and particularly the right and privilege to exercise the right of suffrage, to-wit, to vote for a legally qualified person for the office of Senator of the United States to represent the people of the State of Kentucky and the United States in the Congress of the United States, which person was then and there a candidate for the same, and the right and privilege to have their said votes and each of them, for the person aforesaid, accurately, honestly and truthfully preserved, recorded, returned, counted and certified as actually and in fact cast. That said felonious and unlawful conspiracy was in substance and effect as follows, to-wit:

That previous to said date, to-wit, the 3rd day of November, 1942, and while said election was being held and conducted, and while said legal and qualified

voters were casting their ballots in said Molus precinct No. 32, at said election, and after the same had been so legally cast and had been duly placed in the ballot box of said precinct at said election for preservation, transfer and delivery to the office of the Clerk of the County Court of Harlan County, Kentucky, to be there counted and certified by the Election Commissioners of Harlan County, Kentucky, the said defendants then and there and for the unlawful and felonious purpose of affecting, causing and promoting a dishonest, incorrect and fraudulent count of the votes of said legal and qualified voters and preventing the actual and intended choice of said voters from being expressed, did unlawfully, wilfully, knowingly, feloniously, corruptly, and fraudulently agree to remove and tear from the official book of ballots and stub book furnished for said election at said precinct, a large number of blank and unvoted ballots and to then and there mark, forge and vote the same for the candidate of the Democratic party for the office of Senator of the United States, opposing the candidate for whom the aforesaid voters had voted, in order to deprive the aforesaid voters of their right and privilege of having their and each of their legal votes so cast at said election fully, freely and fairly cast, counted and certified and accorded and given full value and effect; that said defendants further agreed and conspired to place in the ballot box with the legal ballots of the aforesaid voters said false, forged and fictitious ballots, with the intent and purpose that said illegal ballots be returned, counted, certified and constitute a part of the total vote as recorded and returned by them as officers of the election in said precinct at said election, so as thereby to diminish, impair, dilute and destroy the effect of the choice of said

voters and to wrongfully affect the result of said election in said precinct and to cause and procure a dishonest, inaccurate and fraudulent count and certification by the Harlan County Board of Election Commissioners of the votes actually cast at said precinct.

That the purpose and object of said unlawful and felonious conspiracy was further in substance and effect that they, the said defendants, would make a false and fraudulent return and report of said election by padding the ballot box with a large number of said falsely made and fictitious ballots; that they would also make a false and fraudulent report and return of said election and the manner of conducting the same, in order to induce and cause said Harlan County Board of Election Commissioners to make a count of said false and fraudulent votes, by writing on the stub book the names of persons taken from the registration lists, thereby falsely showing that said persons had appeared at said precinct and demanded a ballot and voted in said precinct at said election, whereas, in truth and in fact, they had not done so; that they would make up and return such false, fictitious and forged poll books, stub books and ballots to the Harlan County Board of Election Commissioners, for the purpose of causing them to falsely count said fraudulent and fictitious votes, thereby effecting a fraudulent count of said votes by the County Board of Election Commissioners of Harlan County, Kentucky.

OVERT ACTS

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present:

That to effect the object and purpose of said felonious and unlawful conspiracy, the defendants committed the following overt acts, to-wit:

1. The said defendants, on the 3rd day of November, 1942, at the voting place legally selected for voting at and located in Molus precinct No. 32, exercised their respective duties and obligations as Judges, Clerk and Sheriff of said election and assumed to act in their respective offices and capacities and then and there conducted said election.

2. The defendants, on the 3rd day of November, 1942, at the voting place legally selected for voting in and located at the Molus precinct aforesaid, while the voters aforesaid and each of them were duly making out, marking and casting their votes aforesaid for the legally qualified candidate of the Republican party for the election to the office of Senator in the Congress of the United States to represent the people of the State of Kentucky and the United States, and after said voting had been completed, illegally and corruptly removed a large number of said ballots from the official stub, poll and ballot book, and unlawfully, wilfully, knowingly, coruptly and feloniously marked and voted the same for the Democratic candidate for the office of Senator of the United States and deposited said ballots in the ballot box; that said ballots were not ballots voted at said election but were forged and fictitious and the inclusion thereof in the final count of ballots returned at said election deprived the aforesaid voters of the rights and privileges guaranteed to them by the Constitution and laws of the United States as hereinbefore described; that the said fraudulent and fictitious ballots were thereupon placed in the ballot box, together with the false and fraudulent report and

returns of said election, and delivered by said defendants to the County Court Clerk's Office, at Harlan, Harlan County, Kentucky, to be delivered to the County Board of Election Commissioners; that said false and fraudulent return of said ballots, stubs and ballot book was so returned for the purpose of promoting and causing to be made a dishonest, incorrect and unfair count, return and certification of the result of the election in said precinct, which said count impaired, lessened, diminished, diluted and destroyed the integrity and effectiveness of the ballots and choice of said voters as expressed by their ballot.

3. The said defendants on said date, to-wit, the 3rd day of November, 1942, by reason of the wrongful, fraudulent acts aforesaid, unlawfully, wilfully, knowingly, falsely and corruptly caused and induced the Board of Election Commissioners of Harlan County, Kentucky, to count, return and certify that the Democratic candidate for said office of United States Senator had received more votes than had been cast for said candidate.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

/s/ John T. Metcalf,
United States Attorney.

United States District Court for the
Eastern District of Kentucky

I, A. B. Rouse, Clerk of the United States District Court for the Eastern District of Kentucky, and keeper of the records and seal thereof, hereby certify that the document attached hereto is a true copy of Indict-

ment in case of U. S. v. Clyde Saylor, et al, No. 11208, London Docket, returned and filed 11/22/43. In testimony whereof I hereunto sign my name and affix the seal of said court, in said District, at Lexington, Ky., this 26 day of December, 1950.

A. B. Rouse,
(Seal) Clerk.

I, H. Church Ford, United States District Judge for the Eastern District of Kentucky, do hereby certify that A. B. Rouse, whose name is above written and subscribed, is and was at the date thereof, Clerk of said Court, duly appointed and sworn, and keeper of the records and seal thereof, and that the above certificate by him made, and his attestation of record thereof, is in due form of law.

H. Church Ford,
(Seal) United States District Judge.
December 26, 1950.

I, A. B. Rouse, Clerk of the United States District Court for the Eastern District of Kentucky, and keeper of the seal thereof, hereby certify that the Honorable H. Church Ford, whose name is within written and subscribed, was on the 26 day of December, 1950, and now is Judge of said court, duly appointed, confirmed, sworn, and qualified; and that I am well acquainted with his handwriting and official signature and know and hereby certify the same within written to be his.

In testimony whereof I hereunto sign my name, and affix the seal of said Court at the city of Lexington, Ky., in said State, on this 26 day of December, 1950.

A. B. Rouse,
(Seal) Clerk.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 199

PETER VINCENT CROLICH, SR., RAY WILSON FAIRCHILD and CHARLES JAMES HOLMAN, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 62-65) is reported at 196 F. 2d 879.

JURISDICTION

The judgment of the Court of Appeals was entered on May 20, 1952 (R. 66), and a petition for a rehearing (R. 67-69) was denied on June 17,

1952 (R. 70). The petition for a writ of certiorari was filed on July 16, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTION PRESENTED

Whether an indictment charging a conspiracy to injure qualified voters in the free exercise of their right to vote in a primary election for candidates for United States Senator and Congressman, by means of impersonation of voters, casting of false votes, and causing election officers to make a false return of the results of the election, was sufficient to allege an offense under 18 U.S.C. 241.

STATUTE INVOLVED

18 U.S.C. 241 provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
>
> They shall be fined not more than $5.000 or imprisoned not more than ten years, or both.

STATEMENT

Petitioners Crolich, Fairchild, and Holman were jointly indicted under 18 U.S.C. 241 (*supra*, p. 2) in the United States District Court for the Southern District of Alabama for conspiracy to injure, oppress, threaten, and intimidate citizens in the free exercise and enjoyment of rights and privileges relating to voting at a congressional election, secured to them by the Constitution and laws of the United States (R. 9-14). Petitioners' motions to dismiss the indictment for failure to state an offense under the laws of the United States and motions for a bill of particulars were overruled (R. 15-28, 33-35, 53-55).[1] They then withdrew their former pleas of not guilty and entered pleas of *nolo contendere* (R. 35-36, 55-56). Crolich was sentenced to 18 months' imprisonment and a $2,000 fine (R. 37-38); and Fairchild and Holman were sentenced to imprisonment for one year and one day and a $750 fine (R. 57-

[1] It was stipulated in the record before the Court of Appeals that, because the pleadings of petitioner Fairchild were identical in form and in substance with those of petitioner Crolich, only Crolich's pleadings need be printed (R. 7-8). The pleadings of petitioner Holman are not included in the record. However, petitioner's brief (Pet. 3-4) states that Holman's pleadings were substantially the same as those of Crolich and Fairchild; that although there was no formal order consolidating Holman's appeal with that of the other two, the two cases were argued and submitted at the same time; that the court rendered only one opinion; and that, therefore, one petition for certiorari for all three of the parties is being filed.

58, 63). On appeal (R. 38-39, 58-59) the Court of Appeals unanimously affirmed the judgments (R. 66).

The substance of the indictment was as follows:

On May 2, 1950, a primary election was held in the State of Alabama as an integral part of the general election scheduled for November 7, 1950, to elect, among other officials, a United States Senator and members of the House of Representatives. Qualified voters of certain designated wards in the First Congressional District in Mobile, Alabama, whose names were too numerous to include in the indictment, and were referred to therein as "voters" (R. 10), had rights and privileges guaranteed to them by the Constitution and laws of the United States to vote at the election for a candidate for each of said offices, and to have their ballots given full value (R. 11).

From January 1, 1950, until the indictment was returned on December 14, 1950, the petitioners, along with numerous others, conspired to injure and deprive the aforesaid Alabama voters in the exercise of such rights (R. 11-13). It was part of this conspiracy that the defendants would (1) prevent legal voters from casting their ballots by procuring unqualified persons to impersonate them and to vote in their names; (2) cast and cause to be cast in the aforesaid wards false, forged, and fictitious votes and have them counted and certified, thereby diluting the value and effect of the votes legally cast; (3) procure unqualified voters to impersonate

lawful voters in the aforesaid wards and cast false, illegal and forged votes in the name of the lawful voters with the intent to have the illegal votes counted and certified, thereby diluting the effect of the votes legally cast; and (4) by such means cause the election officials of the aforesaid wards to make a false return of the results of the election (R. 13-14).

ARGUMENT

1. Petitioners' attack on the applicability of 18 U.S. 241 to the acts charged in this indictment is in reality an attempt to have this Court overrule *United States* v. *Saylor,* 322 U.S. 385, which sustained the sufficiency of an indictment charging a conspiracy to violate the rights of voters in certain districts at a federal election by stuffing ballot boxes with false ballots. Here the indictment charges conspiracy against certain specified groups of voters in particular districts by falsely impersonating voters and thus casting false ballots. The distinction between casting false ballots fraudulently obtained in blank, as was done in *Saylor,* and casting false ballots obtained by fraudulently impersonating a voter is, manifestly, without substance. In either case the value of each individual vote lawfully cast is diminished.

Petitioners attempt to distinguish *Saylor* on the ground that there the indictment specified as the voters injured those who had voted for the Republican candidate (the ballot stuffing having been to aid his opponent), whereas here the voters

alleged to have been injured were all those registered as voters in the specified wards. They argue that this difference takes this indictment out of the rationale of *Saylor* and *United States* v. *Mosley*, 238 U.S. 383, which held that the predecessor of 18 U.S. 241 protected the individual voter's right to have his vote counted, and brings it within the rationale of *United States* v. *Bathgate*, 246 U.S. 220, 226, which held that, while the statute guards personal rights, it does not reach "the political, non-judicable one common to all that the public shall be protected against harmful acts." However, as petitioners admit, it is the right of the voter, and not of the candidate, which is controlling. *United States* v. *Gradwell*, 243 U.S. 476. The basis of the *Saylor* decision is that the effect of false ballots is "certainly to prevent an honest count by the return board of the votes lawfully cast." 322 U.S. at p. 389.[2] The acts here

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[2] See also *Prichard* v. *United States*, 181 F. 2d 326, 331 (C.A. 6), affirmed for lack of a quorum, 339 U.S. 974, holding an indictment charging the stuffing of a ballot box sufficient under 18 U.S.C. 241, where the Court of Appeals stated:

> The deposit of forged ballots in the ballot boxes, no matter how small or great their number, dilutes the influence of honest votes in an election, and whether in greater or less degree is immaterial. The right to an honest count is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States.

For a comprehensive annotation on the subject of vote fraud offenses under 18 U.S.C. 241, see 162 A.L.R. 1388-1394.

charged have exactly that effect, whether the false ballots were for one candidate or another. Hence, the court below properly held that the *Saylor* decision is controlling.[3] Moreover, paragraph 6 of the indictment alleges that petitioners "did prevent, obstruct and hinder legal and qualified voters from casting a ballot in the said election by procuring and causing unqualified and unauthorized persons to impersonate them and vote in their name and stead" (R. 13). Manifestly, this alleges a direct deprivation of the immediate personal right to vote of the person so impersonated. It clearly falls within the rationale of the *Mosely* case, *supra*.

There is no merit in petitioners' contention that the indictment was defective in that it did not charge a conspiracy with respect to votes for any federal office (Pet. 10-11). In the indictment (R. 9-14) paragraph 1 refers to a primary election in designated wards for a "United States Senator and members of the House of Representatives of the Congress of the United States"; paragraph 2 alludes to the primary election for "United States Senator from the State of Alabama and Congressman from the First Congressional District of Alabama"; and paragraph 3 mentions "said elec-

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[3] Admittedly, petitioner's argument, based on the repeal of Section 19 of the Enforcement Act of 1870, 16 Stat. 140, 144, repealed February 8, 1894, 28 Stat. 36 (Pet. 14-15), was rejected by the majority of this Court in the *Saylor* decision.

tion for a candidate for each of said offices." In the charging part of the indictment, in paragraph 5, unequivocal reference is made to the "right to cast a ballot for legally qualified persons for the aforesaid offices of the United States Senator and for United States Representative for the First Congressional District of Alabama." The particularizing parts of the indictment, in paragraphs 6 through 9, speak of the "said election" in the "aforesaid Wards," referring back to the primary election for United States Senator and Congressman in the wards theretofore designated. It is submitted that when the indictment is read in its entirety, it charges in clear and unmistakable terms that the purpose of the conspiracy was to deprive the named citizens and qualified voters of their right to cast their votes for candidates for federal offices.[4]

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[4] *Blitz* v. *United States*, 153 U.S. 308, cited by petitioner (Pet. 10), is not apposite. It did not involve a conspiracy under 18 U.S.C. 241, but an indictment under Section 19 of the Enforcement Act, involving substantive offenses. The indictment was held fatally defective because it failed to charge clearly that in impersonating a voter the accused voted for a representative of Congress. But in the instant case, as shown above, the indictment did charge violation of suffrage rights with respect to a primary election for federal offices.

CONCLUSION

This case was correctly decided under principles of law established by the decisions of this Court. It is submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.

JAMES M. MCINERNEY,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

AUGUST 1952.

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In the Supreme Court of the United States

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No. 199

PETER VINCENT CROLICH, SR., RAY WILSON FAIRCHILD and CHARLES JAMES HOLMAN, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF ON BEHALF OF PETITIONERS

QUESTION FOR DECISION

Mr. Justice Frankfurter stated in his opinion in **Bay Ridge Operating Company v. Aaron,** 334 U. S. 446, 484: "On the question you ask depends the answer you get". Hence, it is of vital importance that the statement of the question for decision be made with exactness and precision.

We respectfully submit that an answer to the question posed in the Brief for the United States (Government's Brief, p. 2) will not decide this case. In our opinion there are at least two questions here, as set out

in our Petition, page 2, viz: the nature of the right protected by 18 U. S. C. 241 (personal right of identifiable groups as distinguished from the general public right to an honest election), and second, the nature of the conspiracy (to affect the election to Federal offices). The effort on the part of the Government to reduce this case to a single question makes the question posed much too broad, and, with due deference, we suggest that the question as set forth in the Brief of the Government is incorrectly stated in at least two respects, viz.:

(a) It is stated in the Government's Brief on page 2 in the question for decision that the indictment charges a conspiracy "to injure qualified voters". We think the indictment charges otherwise. The precise words found in paragraph 5 of the indictment (R. 12) are that certain persons conspired

> "to injure and oppress citizens of the United States, viz., the legal and qualified voters of the aforesaid First Congressional District of Alabama".

The distinction between what the indictment charges and the statement of the question in the Government's Brief will be hereinafter shown.

(b) It is stated in the Government's Brief on page 2 in the question for decision that the indictment charges a conspiracy "to injure qualified voters in the free exercise of their right to vote in a primary election for candidates for United States Senator and Congressman". This might mean that the indictment charges one of two possible things; either (1) the qualified voters were deprived of their right to vote in a primary election in which a United States Sen-

ator and Congressman sought office, even though such voters did not intend to and did not vote for Federal candidates; or (2) the qualified voters were deprived of their right to vote for a candidate for United States Senate and a candidate for Representative in Congress in a primary election held for such purpose. Obviously, if the indictment charges (1), the indictment is invalid in that if a voter did not intend to and did not vote for a candidate for United States Senate or Congress, then no Federal offense is involved even if he were deprived of his right to vote for candidates for state office. We assume that the Government is contending that the indictment charges the second alternative, but we fail to find where the indictment charges that the qualified voters were prevented from voting for a candidate for the United States Senate or Representative in Congress, nor do we find where the indictment charges that any voters voted for such candidates and that their votes were not honestly counted. Actually, the indictment charges a dilution of the votes of the qualified voters in the First Congressional District of Alabama. In no place does the indictment state that such voters were prevented from voting for a candidate for Federal office, nor that their vote was dishonestly counted if they did so vote. (See Record page 13, 14, Paragraphs 6, 7, 8 and 9 of the indictment).

Therefore, the question presented, accurately stated, is whether an indictment is valid which charges a conspiracy to injure all of the voters of the First Congressional District of Alabama by preventing them from voting or by diluting with illegal votes the votes of all of the voters in the First Congressional District of Alabama in an election in which candidates of-

fered for Federal office, even though the indictment does not charge (1) that said voters attempted to or did vote for the candidates for Federal office, or (2) that illegal votes were cast for a candidate for Federal office.

ARGUMENT

A. The distinction which we seek to make between "qualified voters" and the "voters in the aforesaid First Congressional District of Alabama" is vital. The cases involving 18 U. S. C. 241 which have reached this Court have enunciated the following propositions, viz.: A citizen of the United States is protected by the statute in an election involving candidates for Federal office against a conspiracy to deprive him of the right (a) to vote, **United States v. Mosley,** 238 U. S. 383, and (b) to have his vote honestly counted. **United States v. Saylor,** 322 U. S. 385. But the general public is not protected against dishonesty in elections. **United States v. Bathgate,** 246 U. S. 220.

The effect of the Court sustaining this indictment is to broaden the scope of 18 U. S. C. 241. Although the indictment in places charges that the voters of the First Congressional District were prevented from voting (paragraph 6, R. 13), it also states that all of the voters in the wards in which the dishonesty is alleged to have taken place actually voted (paragraph 2, R. 10, 11). Therefore, the indictment really complains of the fact that the votes of all said voters were diluted by illegal votes. Since the indictment alleges that the voters in the First Congressional District were injured by the conspiracy, it obviously is seeking to bring within the coverage of the Act dishonesty in elections. If the voters of the First Congressional

District were injured by the dilution of the votes cast, then the offense charged is necessarily against all of the voters in the District and is, therefore, an offense against the public, the offense consisting of dishonesty in elections. If the indictment had alleged that the conspiracy injured certain voters, viz., those voters who voted for Hill for the Senate and Boykin for Congress, because illegal votes were cast for the respective opponents of Hill and Boykin, then the voters who voted for Hill and Boykin would have been injured in that their votes would have been diluted, but those voters who voted for their respective opponents would not have been injured because they were allowed (1) to vote, and (2) their votes were not diluted. If the voters who voted for the respective opponents of Hill and Boykin were injured at all, their injury consisted of deprivation of their right to have an honest election, a right not protected by 18 U. S. C. 241.

This distinction which seems so clear to us is illustrated in the case of **Chavez, et al v. U. S.** 261 F. 174 (C.C.A. 8th). The indictment in the **Chavez** case alleged that the defendants conspired "to injure and oppress certain citizens of said State and of the United States in the free exercise and enjoyment of certain" Federal rights and privileges i. e., "the rights and privileges appertaining .... to all the legally qualified voters at said election voting in said State of New Mexico". The Court held the indictment void, stating:

> "It needs but a glance at the language of the indictment above quoted to show that it proceeds upon a broad conception of the statute held in the Bathgate case to be erroneous. The conspiracy charged is, in apt and ex-

> press words, against the right of the candidates and **the voters in the state at large**—the right of the former as standing for office and of the latter not distinguishable from the general public interest." (black type supplied).

B. It is assumed that the Government contends that the indictment alleges that the legal voters who were prevented from voting attempted to or would have voted for a candidate for Federal office. It is further assumed that the Government contends that the indictment charges that the defendants in casting illegal votes actually voted for a candidate for Federal office. But we fail to find such allegations in the indictment.

Section 6, 7, 8 and 9 of the indictment (see Record pages 13-14) set forth the acts which were done in furtherance of the conspiracy. Summarizing these sections, they charge that the defendants did prevent the voters from casting a ballot in said election by impersonating said voters and voting in their stead; that illegal votes were cast with the intent that they be counted as a part of the total vote in said election, thereby diluting the votes honestly cast; and that the defendants did cause the election officials to make a false return of the results of said election. In no place does the indictment allege that the legal voters who were prevented from voting attempted to or intended to vote for a candidate for Federal office, and in no place does the indictment allege that in casting the illegal ballots, the persons so casting said ballots actually voted for a candidate for Federal office.

In this connection see the cases of **United States v. Kantor**, 78 F. 2d 710 (C.C.A. 2nd) and **Blitz v. United**

States, 153 U. S. 308 discussed on pages 10 and 11 of the Petition.

Respectfully submitted,

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